



**Testimony of the
Connecticut Association of Not-for-profit Providers For the Aging**

**Submitted to the Select Committee on Aging
By Mag Morelli, President**

February 19, 2009

In Opposition to

Senate Bill 876, An Act Concerning Liability of Nursing Home Owners for Neglect and Abuse of Nursing Home Residents and Criminal Records Checks

House Bill 5600, An Act Concerning Access to Comprehensive Factual Information Regarding Long-Term Care Facilities

The Connecticut Association of Not-for-profit Providers for the Aging (CANPFA), an organization of over 150 non-profit providers of aging services representing the full continuum of long-term care, including skilled nursing facilities, submits the following testimony.

I want to preface my testimony by saying that while we object to both of these bills; we understand the committee's concern for all nursing home residents and the desire to provide the highest quality of nursing home care. We share that desire and would like to work with the committee toward achieving that goal.

Senate Bill 876, An Act Concerning Liability of Nursing Home Owners for Neglect and Abuse of Nursing Home Residents and Criminal Records Checks

This bill would require that DPH include a notice on all nursing home change of ownership applications stating that any nursing home licensee or owner (including officers, directors), administrator, medical director, director of nursing and assistant administrator, director of nursing "may be subject to criminal liability, in addition to civil and administrative sanctions under federal and state law, for the abuse or neglect of a resident of the nursing home perpetrated by an employee of the nursing home."

CANPFA strongly objects to this bill. To the extent the notice is intended to summarize criminal liability that already exists under state law, it is wrong. There is no state law that provides for criminal liability of any of the categories of individuals enumerated in the proposed bill in connection with an employee's abuse or neglect of a nursing home resident.

CANPFA also notes that Section 1 (b) of the bill, which requires that each potential nursing home licensee submit to a criminal background check, is unnecessary. Section 19a-491a(c)

already requires each applicant for a nursing home license to submit to state and federal criminal background checks.

House Bill 5600, An Act Concerning Access to Comprehensive Factual Information Regarding Long-Term Care Facilities

CANPFA objects to this bill because it creates unnecessary revisions to the already extensive nursing home residents' bill of rights and endorses a flawed 5-star rating system.

First, the proposed revision that residents receive that names and credentials prior to admission and during his or her stay of the names and credentials of all staff rendering direct care to patients and the staff to patient ratio on all shifts -- would be burdensome for facilities, which would have to constantly update and revise rosters and credentials every time a staff change is made.

- Staffing levels are already posted in a nursing home on a daily basis by licensed and unlicensed categories. This already exists as a mandate.
- The credentialing of direct care staff is an extensive process done upon hire. As a licensed entity, the nursing home's direct care credentialing process is already regulated, overseen, and verified by the licensing agency.

Second, the bill also would require that residents be provided with a "written statement, prior to or at the time of admission and during the patient's stay, that the facility utilizes the most appropriate and best care practices." Such a statement contributes nothing to the goal of this law, which is to identify and explain nursing home resident rights. We also question what the proposal would consider the "most appropriate and best care practices"? Are they practices that comply with the law, practices that the resident expects or practices that meet some other standard?

Third, while we have always endorsed the transparency of the nursing home inspection process and the availability of the Nursing Home Compare website, we cannot at this point in time support an initiative that validates or lends credence to the CMS 5-star rating system. It is truly unfortunate, but the current 5-star system is the result of a poorly executed idea being rushed out to the public in the waning days of the former administration. A 5-star plan may be the right idea, but this one was poorly planned, prematurely implemented and awkwardly rolled out.

There are many, many data flaws in the current 5-star system. For instance:

- There is data to show that nursing homes that care for sicker residents are likely to receive fewer stars.
- There is data to show that large homes are likely to receive fewer stars.
- There is data to show that the quality measures chosen are not weighted appropriately and work against homes with busy sub-acute units.
- The process has revealed that CMS software has been inaccurately double counting certain nursing home survey results for years -- and Connecticut results have the fourth highest incidence of this occurring. This inaccurate data is being used to calculate the star ratings.

And even if all of these data flaws were corrected, we would still not endorse this 5-star system because by design, CMS has determined that they will never allow more than 10% of a state's nurse homes to achieve 5 stars at any one time. Further more, 20% of the homes must be given a 1 star rating. So if you are considered a 5 star home in the month of

February, you may be kicked down to a 4 star in March because another home was bumped into the 5 star category and while nothing has changed in your home – only 10% of homes can be considered 5 star at any one time. We could never endorse a system that does not encourage every single nursing home to achieve the highest possible rating. And we would not endorse a system that would push a home into the one star category just to reach the 20% quota.

This system discourages the sharing of best practices, it discourages the exchange of ideas, it discourages shared learning, and it discourages collegiality. We should not be in competition with each other – we should all be striving for excellence! Most nursing homes are breaking their backs for improved quality while living with onerous regulation and decreasing reimbursement and that should be recognized, not discouraged.

And we fail to see how this arbitrary 10% cap on 5 star facilities helps the consumer.

Thank you for your consideration of this testimony.

Mag Morelli

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